

ORDINANCE NO. 13
Series 2003

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON AMENDING CHAPTER 15 OF THE CITY CODE OF THE CITY OF GUNNISON ENTITLED “LAND DEVELOPMENT CODE”, ESTABLISHING DEFINITIONS AND LOCATIONAL STANDARDS FOR SEXUALLY ORIENTED BUSINESSES WITHIN THE CITY OF GUNNISON, COLORADO.

WHEREAS, the City of Gunnison wishes to regulate sexually oriented businesses to promote the health, safety, and general welfare of the citizens of the City; and

WHEREAS, it is the intent of the City of Gunnison to establish reasonable and uniform regulation to prevent the inappropriate location and off-site impacts of sexually oriented businesses within the City of Gunnison; and

WHEREAS, the City of Gunnison desires to locate sexually oriented businesses in an appropriate area, reducing or eliminating the adverse secondary effects of such businesses; and

WHEREAS, the City of Gunnison does not intend to impose a limitation or restriction or deny access by adults to sexually oriented materials protected by the First Amendment to the United States Constitution or the Colorado Constitution, or to deny access by distributors and exhibitors of sexually oriented entertainment to their intended market;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, ORDAINS THAT:

Section 1. Findings of Fact. Based upon the evidence submitted at the public hearing held hereon, and the recommendations of the City of Gunnison Planning and Zoning Commission, the City Council of the City of Gunnison hereby finds as follows:

A. Regulation of sexually oriented businesses further substantiate governmental interests and is necessary because, in the absence of such regulation, significant criminal activity has historically and regularly occurred. This history of criminal activity has included prostitution, narcotics, and liquor law violations, violent crimes against persons, and property crimes.

B. Sexually oriented businesses are frequently used for unlawful and unhealthful sexual activities, including prostitution and sexual liaisons of a casual nature.

C. The concern over sexually transmitted diseases, including AIDS, is a legitimate health concern of the City.

D. Sexually oriented businesses have deleterious effect on both neighboring businesses and surrounding residential areas, causing an increase in crime and a decrease in property values.

E. It is recognized that sexually oriented businesses have serious objectionable characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area.

F. The City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizens; to preserve the quality of life; to preserve the property values and character of surrounding neighborhoods; to deter the spread of urban blight; and to protect the citizens from increased crime.

Section 2. Definitions Amended. Section 15-4-1 of the City Code of the City of Gunnison, the definition article of the Land Development Code, is hereby amended by the addition of the following defined terms:

15-4-1, Definitions.

23.1 Church means any building which people regularly use to attend, participate in, or hold religious services, meetings, and other activities. This definition shall include buildings in which the religious services of any denomination are held.

80.1 Massage Parlor means a commercial establishment or place primarily in the business of providing massage services, but not licensed pursuant to the Colorado Massage Parlor Code (Article 48.5 of the Title 12, C.R.S.).

87.1 Nudity or State of Nudity means:

- a. the appearance of human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female human breast; or
- b. a state of dress which fails opaquely and fully to cover human buttocks, anus, male or female genitals, pubic region, or areola or nipple of the female breast.

115.1 School means a facility that provides a curriculum of academic instruction, including kindergartens, elementary schools, middle schools, junior high schools, high schools, or the principal campus of a college or university.

117.1 Sexually Oriented Business means any adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, nude modeling studio, or sexual encounter center.

- a. Adult Arcade means any commercial establishment to which the public is permitted or invited where, for any form of consideration, one or more still or motion picture projectors, or similar machines, or other image producing machines, for viewing by five or fewer persons per machine at any one time, are used to regularly show films, motion pictures, video cassettes, slides or other photographic, digital, or electronic reproductions depicting specified sexual activities or specified anatomical areas.
- b. Adult Bookstore, Adult Novelty Store, or Adult Video Store means a commercial establishment which devotes at least fifty percent (50%) of its stock-in-trade or interior floor space to, or receives at least fifty percent (50%) of its revenues from the sale, rental or viewing (for any form of consideration) of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas and which are intended to be read, viewed or used outside the premises of the commercial establishment.
- c. Adult Cabaret means a nightclub, bar, restaurant, concert hall, auditorium, or other commercial establishment which regularly features live performances that are characterized by the exhibition of specified sexual activities or the exposure of specified anatomical areas.
- d. Adult Motel means a motel, hotel or similar commercial establishment which offers public accommodations, for any form of consideration, and provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas and which advertises the availability of the sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off premises advertising including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television, and offers a sleeping room for rent for a period of time less than five (5) hours.
- e. Adult Motion Picture Theater means any commercial establishment to which the public is permitted or invited, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown for more than 100 days annually that have an emphasis on depicting or describing specified sexual activities or specified anatomical areas. Any establishment meeting the definition of an adult arcade is not an adult motion picture theater.

- f. Nude Modeling Studio means any place where a person who appears in a state of nudity or displays specified anatomical areas is provided

Ordinance No. 13
Series 2003
Page Three

for money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons. The provisions of this definition shall not apply to:

1. A college, junior college, or university supported entirely or partly by taxation;
 2. A private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
 3. A business located in a structure that has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and where, in order to participate in a class, a student must enroll at least 3 (three) days in advance of the class.
- g. Sexual Encounter Center means a business or commercial enterprise that regularly offers, for any form of consideration, activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude. This definition does not apply to any actions in compliance with any treatment or examination of another person for a bona fide medical purpose when such treatment or examination is conducted in a manner substantially consistent with reasonable medical practices, or to bona fide private parties not open to the general public.

122.1 Specified Anatomical Areas mean:

- a. less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the areola; or
- b. human male genitals in a discernibly turgid state, even if completely and opaquely covered.

122.2 Specified Sexual Activities mean:

- a. human genitals in a state of sexual stimulation or arousal, or tumescence;
- b. masturbation, actual or simulated;
- c. sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; and
- d. fondling or other erotic touching of human genitals, pubic region, anus, buttocks, or female breasts.

Section 3. Schedule of Uses Amended. Table 7-3, Schedule of Uses - Commercial/Industrial Zone Districts, contained in Chapter 15, Land Development Code, Article 7, Use and Dimensional Standards, of the City Code of the City of Gunnison, is hereby amended to provide that sexually oriented businesses as commercial or office uses are prohibited in the B-1, CBD, and C zones, and are allowed uses in the I zone, subject to the standards established in Section 15-7-4(D) of the City Code of the City of Gunnison, Colorado. As amended, the commercial and offices uses portion of Table 7-3 shall read as indicated on Appendix A.

Section 4. Use and Dimensional Standards Amended. Section 15-7-4 of the City Code of the City of Gunnison, Colorado, the use and dimensional standards article of the Land Development Code, is hereby amended by the addition of a new subsection (D), to read as follows:

15-7-4(D). Sexually oriented businesses.

1. Use Allowed. The use is an allowed use in the district in which it is proposed.

Ordinance No. 13
Series 2003
Page Four

2. A sexually oriented business or massage parlor shall not be operated, established, substantially enlarged, or have its ownership or control transferred, if it is within 300' (three hundred feet) of:
 - a. Churches;
 - b. Public or private schools, daycare homes, daycare centers, or daycare schools;
 - c. Parks;
 - d. The boundary of any residential zone district;
 - e. Another sexually oriented business or massage parlor.
3. For the purpose of these review standards, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest property line of the parcel upon which the building or structure used as part of the premises where a sexually oriented business or massage parlor is conducted, to the nearest property line of the premises of the church or school, day care home, center, or school; park, to the nearest boundary of a residential zone district, or to the other parcel containing another sexually oriented business or massage parlor.
4. No more than one sexually oriented business or massage parlor may be operated, established, or maintained in the same building, structure or portion thereof, or the floor area increased of any sexually oriented business or massage parlor in any building, structure, or portion thereof containing another sexually oriented business or massage parlor.
5. Advertisements, displays or other promotional materials displaying, depicting, or describing specified anatomical areas or specified sexual activities shall not be shown or exhibited so as to be visible or audible to the public from adjacent streets, sidewalks, or walkways from other areas outside the establishment; and all building openings, entries and windows for sexually oriented businesses/massage parlors shall be located, covered or screened in such a manner as to prevent the interior of such premises from being viewed from outside the establishment.

Section 5. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity will not affect other provisions or the applications of this ordinance which can be given effect without the invalid provisions or applications, and to this end, the provisions of this ordinance are declared to be severable.

Section 6. Should any section, clause, phrase, or provision of this ordinance be ruled invalid or unenforceable by any court of competent jurisdiction, it is hereby declared the intent of the City Council of the City of Gunnison, Colorado, that the remaining provisions of this ordinance shall be given full force and effect if it is possible to do so.

INTRODUCED, READ, PASSED, AND ORDERED PUBLISHED this 23rd day of September, 2003, on first reading, and introduced, read, and adopted on second and final reading this 11th day of November, 2003.

Mayor

ATTEST:

City Clerk